



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/584,640	05/31/2000	Jee Loon Look	0630/0G528	4278

25291 7590 07/18/2002

WYETH
PATENT LAW GROUP
FIVE GIRALDA FARMS
MADISON, NJ 07940

EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 07/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Office Action Summary	Application No.	Applicant(s)
	09/584,640	LOOK ET AL.
	Examiner	Art Unit
	David J. Walczak	3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 June 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 and 51-56 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 and 51-56 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Specification

The specification remains objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The subject matter in claims 51-54 does not have antecedent basis in the specification. It is noted that this objection was made in the previous Office Action, but was not addressed by the Applicant.

Claim Rejections - 35 USC § 112

Claims 51 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 51, an antecedent basis for "the surface area of the first composition" should be defined. In regard to new claim 53, this claim is indefinite in that it defines the same subject matter already defined in claim 52. It appears that the Applicant has confused claims 52 and 53. Further, it is unclear as to whether or not the "second composition" claimed therein is intended to define the same "second composition" already defined in claim 1, or a different "second composition".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

57-67
Claims 1-13 and 51-56 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Recker in view of Prince. In regard to claims 1, 3, 4, 5 and 12,

Recker discloses a lipstick composition comprised of a container 10, 11 having walls, a

smooth interior contour and an exterior contour wherein the composition 17 is in sliding

contact with the walls and is advanceable and retractable within the container and

wherein the walls proximate to the composition are rigid throughout (as evidenced by

the cross-hatching which indicates that the walls are metal) and a screw 15 rotatably

connected to the container and disposed within the composition in order to

advance/retract the composition when turned. Although the composition is not

disclosed as being formed from two different compositions, attention is directed to the

Prince reference, which discloses another lipstick product wherein the product is formed

from a first composition 14 and a second composition 11 which differ in color to form a

predetermined multi-colored image in order to enable a user to easily apply two different

colors of lipstick. Accordingly, it would have been obvious to one of ordinary skill in the

art at the time the invention was made to employ the two composition product disclosed

by Prince into the container disclosed by Recker in order to enable the Recker device to

dispense a two composition product. In regard to claim 2, the interior contour of

7 C,
container 10, 11 is different than the exterior contour. In regard to claim 6, the Recker

device produces an image in the shape of an ellipse. In regard to claim 7, each cross-

section of the stick in the Prince device contains the same image. In regard to claim 8,

63

the stick is used for application. It is noted that the statements of intended use, i.e., "for application to an animal" do not lend any patentable structure to the claims. In regard to claim 9, the composition is a ^{lipstick} ^{for skin or lips or} ¹⁶⁵ ¹⁶⁴. In regard to claim 10, the composition includes a pharmaceutically acceptable vehicle. In regard to claim 11, the composition ¹⁶⁶ comprises a colorant. In regard to claim 13, the Prince stick composition is disclosed as being any preparation to be applied to the surface of a human body for cleaning and conditioning the skin (column 2, lines 40-43). Accordingly, as lip balm is applied to human skin and used for conditioning the lips, the Prince reference anticipates the use of lip balm. In regard to claim 51, the surface area of the first composition 14 is substantially different than the surface area of the second composition 11. In regard to claims 52, 53 and 54, the wall thickness of the first composition is substantially different than that of the second composition 11, i.e., at the top portion of the stick, the thickness of composition 14 is greater than the thickness of composition 11 as composition 11 narrows at the top (see Figure 2).

Response to Arguments

Applicant's arguments with respect to claims 1 and 12 have been considered but are moot in view of the new grounds of rejection. Regarding claims 52 and 54, as discussed *supra*, the top portion of the Prince stick is structured as claimed. Even though the thickness of the compositions may be disclosed as "substantially" the same below the tip, at the tip, the stick is shaped as claimed. As claims 52 and 54 do not

define where on the stick the wall thicknesses are different, the claims are properly rejected as discussed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Lang and Marchant references are cited for disclosing other lipstick dispensers.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
July 16, 2002